IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8722 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL BHAVNABEN ARVINDKUMAR

Versus

STATE OF GUJARAT

Appearance:

MR KB PUJARA for Petitioner

NOTICE SERVED BY DS for Respondent No. 1, 5, 6, 7, 8, 9, 10

MR AD OZA for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/09/2000

ORAL JUDGEMENT

Rule. Mr.K.T.Dave, Ld.AGP waives service of rule for respondent Nos. 1 and 2 and Mr AD Oza waives service of Rule for respondent Nos. 4 and 5.

2. In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ of mandamus directing the respondents to act on the basis that the petitioner was born on 12.12.1983 as per the birth certificate issued by the Gadhoda Gram Panchayat (at annexure "A" to the petition) and to correct their record by substituting the date of birth 12.12.1983 in place of 2.7.1984.

3. In the memo of the petition a firm statement has been made by Bhikhibahen Arvindbhai Patel, the mother of minor petitioner-Bhavanaben Arvindkumar Patel that while admitting the petitioner in the school, her birth date was wrongly mentioned as 2.7.1984 and the said date, therefore, came to be reflected in the records of subsequent schools and in the certificates issued by the Secondary Education Board and the Higher Secondary Education Board. The petitioner recently received a copy of birth certificate showing her birth date as 12.12.1983.

In para 4 of the petition the dates of both the children of Arvindbhai are given i.e. Bhavanaben (petitioner) born on 12.12.1983 and son-Mayank Kumar born on 11.6.1986. The entry of the petitioner's birth date i.e. 12.12.1983 was made in the relevant record of Gram Panchayat on 27.12.1983 and the entry about son-Mayank came to be made on 15.6.1986.

4. The learned counsel for the petitioner has relied on the decisions of this Court in Diptidevi Patel vs State of Gujarat 25 GLT 150 and Dakshaben J.Patel vs Director of Education, 28 GLT 244; Special Civil Application No.8846/92 decided on 15.7.1993 (Coram: Honourable Mr.Justice R.K.Abichandani) and in Special Civil Application No.3304/98 decided by me on 4.5.98 laying down that the date of birth as mentioned in the birth register is to be preferred to the birth date recorded in the School Leaving Certificate. The Govt.Resolution dated 11.11.1989 also contains the rule to the aforesaid effect.

5. Mr.K.T.Dave, Ld.AGP for respondent Nos 1 and 2 and Mr AD Oza for respondent No. 4 and 5 states that the correction in the entry of birth date can be made by the Board only after receiving recommendation to that effect from the concerned school from where the petitioner passed the XIIth Standard examination.

6. Mr.Pujara, learned counsel for the petitioner

states that the petitioner had studied in four schools and it was the entry made in the school record of the first school, i.e. the respondent No.9 which would be required to make that correction, but the the said school did not make the correction on the ground that it is not authorised to do so.

7. Having heard the learned counsel for the parties and having regard to the Govt.Resolution dated 11.11.1989 and the law laid down by this Court in the aforesaid decisions, it is apparent that the birth date recorded in the birth register of Gadhoda Gram Panchayat represented by respondent No.10 Talati-cum-Mantri is the date which should be acted upon by all the respondents including respondent Nos 4 and 5. If any further formalities are required to be carried out, respondent Nos 6,7,8 and 9 shall carry out necessary formalities and make necessary correction in the record by giving specific reference to the orders of this Court and forward the necessary recommendations to respondent Nos 4 and 5.

8. Rule is made absolute to the aforesaid extent. Since respondent Nos 6 to 10 have chosen not to appear, there shall be no order as to costs.

Direct service is permitted.

14.9.2000 (M.S.SHAH,J)